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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,180	09/18/2003	Douglas Herman Grabenstetter	2002P13749US01	5568
7590 09/27/2005			EXAMINER	
Siemens Corporation Intellectual Property Department 170 Wood Avenue South Iselin, NJ 08830			GARLAND, STEVEN R	
			ART UNIT	PAPER NUMBER
			2125	

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,180

Applicant(s)

GRABENSTETTER ET AL.

Examiner

Steven R. Garland

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11-13 is/are rejected.
- 7) ☒ Claim(s) 7-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-13 are pending.
2. In view of applicant's amendments to the specification and the drawings, the objections to the drawings and specification set forth in the previous office action are withdrawn.

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 12 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 12 appears to be directed to storing mental steps on a medium, since the instructions are not required to be computer implemented and the instructions on the medium are analogous to descriptive printed matter being stored on a medium.

In response to applicant's arguments, the claim only requires that the instructions be accessible not actually used by the machine.

In view of the amendments to claim 1, the rejection of claims 1-11 under 35 U.S.C. 101 is withdrawn.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-6, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ho et al. "Minimizing the number of tardy jobs for m parallel machines" in view of Spoltore et al. 2004/0015971.

Ho et al. teaches a scheduling method which comprises initializing a job set with a set of on time jobs σ , a set of late jobs δ , and a set of jobs to be scheduled π ; selecting a job with a minimum value; determining if the set of jobs will exceed the scheduled due dates; and modifying the set of on time jobs by removing the job if the time is exceeded. See pages 346-347 in the section entitled "job focused approach" and also note page 344 which defines various variables and step 4 on page 346. Also note the use of processing time on page 347.

Ho et al. however does not disclose implementing the method on a device, storing the method on a medium, or specifically applying the method to fabricating metal products.

Spoltore et al. 2004/0015971 teaches computer implementing a scheduling system, using the method in various environments, and storing programming on a medium. Note paragraphs 0007,0009-001, 0020,0025-0029, 0031-0043,0054, figure 1 and claims 15-20.

It would have been obvious to one of ordinary skill in the art to modify Ho in view of Spoltore and implement the method on a computer with memory as well as storing the scheduling on a medium for later use in case the computer crashes.

Further it would have been obvious to one of ordinary skill in the art to modify Ho in view of Spoltore and apply the scheduling method to any factory scheduling problem such as scheduling metal working machines to avoid late orders.

In response to applicant's arguments in regards to Ho et al., note step 2 on page 346 in which the job w selected, from the unscheduled jobs π , is based on both the earliest due date and smallest processing time (both minimum values) of the remaining jobs. The job is then added to the set of scheduled jobs, the job set is then checked to see if the scheduled due dates are not exceeded and if they are with the addition of job w then the schedule is modified in step 4. Note also in Step 1 that each job processing time is compared with its due date and if the job processing time is greater than its due date the job is rejected ($p_i > d_i$) since the job will be tardy otherwise the job is placed in the jobs to be scheduled group π .

8. Claims 7-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven R. Garland whose telephone number is 571-272-3741. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 571-272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SA U

Steven R Garland
Examiner
Art Unit 2125

9/26/05

Albert W. Paladini 9-26-05
ALBERT W. PALADINI
PRIMARY EXAMINER